Statement of

William E. Kennard, Chairman
Federal Communications Commission

Before the
Committee on Commerce
United States Senate

on

"Broadband Internet Regulatory Relief Act"

July 26, 2000

Thank you Mr. Chairman and Members of the Committee. I appreciate the opportunity to submit written testimony to the Committee this morning.

I would like to state at the outset that I agree wholeheartedly with the objective of speeding deployment of broadband services to all Americans, regardless of where they live. Nobody should be left behind in the broadband revolution.

Despite the old saying, however, sometimes you do have to look a gift horse in the mouth, particularly if it is a Trojan Horse. I am afraid that is what this legislation is. It appears to be a gift horse to competition, but it is really just the opposite. It would slow down the delivery of broadband services to rural areas by impeding the growth of competition.

The genius of the Telecommunications Act of 1996 (1996 Act) is the delicate balance it strikes between regulation and deregulation to achieve competition in all forms of communications, and to deploy the fruits of that competition to all of the American people. The process has worked well, and consumers are better off as a result.

I am sure that increased competition is the well-meant intention of the proposed legislation. Inadvertently, however, I believe this legislation will not only upset the balance struck by the 1996 Act, it actually would reverse the progress attained by the 1996 Act. In an effort to move us forward, this bill mistakenly moves us backward.

The 1996 Act Is A Model For the World

Recently, the European Commission (EC) issued a bold package of proposed legislation and directives aimed at bringing the Internet revolution to Europe. It is no coincidence that the EC's initiative looks like a close cousin of our Telecommunications Act of 1996. The European Commissioners have concluded that in order to chart a course towards American-style Internet growth they must build a vessel not unlike the 1996 Act. This course includes such staple items included in our Act as local loop unbundling and collocation.

We are setting the example for the rest of the world. Changing course midstream by diminishing the incumbent carriers' obligations to open the local markets to competition would not only be detrimental to American consumers, but would also put at risk the leadership role the United States has played in the global telecommunications market.

A Fabric

The 1996 Act is a fabric, with the thread of each part connected to every other part. Unravel one thread, and you risk unraveling the entire fabric.

As I tell regulators from other nations, you cannot cherry-pick the 1996 Act. In this age of convergence, no network is an island, and the conduit and content of each is entwined with every other.

My message to you today is simple: the Telecommunications Act of 1996 is working. Because of years of litigation, competition did not take hold as quickly as some had hoped. The fact, however, that it is now working is undeniable. Local markets are being opened, broadband services are being deployed, and competition, including broadband competition, is taking root.

Now that implementation is fully underway it would be tragic to change directions. That is my concern with the bill before you. It proposes to exempt an incumbent local exchange carrier (ILEC) from the Section 251(c) unbundling and resale requirements, with respect to advanced services, if 80 percent of the local loops in a given service area are "DSL-capable" within 3 years or 100 percent are "DSL-capable" within 5 years. But, without unbundling and resale, competitors seeking to provide broadband services would be frozen out and rural consumers would soon be forced to pay higher rates. This is not a step I can endorse.

I would also note that the issues surrounding inter-carrier compensation for ISP-bound traffic are before the Commission in a formal rulemaking proceeding. We have compiled a record, the analysis is currently under way, and we expect to resolve the issues expeditiously. Therefore, I respectfully request that the issue of reciprocal compensation continue to reside, in the first instance, with the Commission. I will keep you apprised of our progress in this proceeding.

Rapid Growth of Broadband Deployment

As local markets are opened, broadband deployment is both stimulated and accelerated. Specifically, it is the opening of those local markets that is driving broadband deployment and innovation. This is true because nondiscriminatory access to the "last mile" and the ability to collocate -- both components of the competitive checklist -- are critical inputs for the provision of DSL service.

The Commission's faithful implementation of the Act has resulted in an explosion of broadband deployment. As of the beginning of the year 2000, we estimate there were 2.8 million actual subscribers to broadband, high-speed telecommunications services at speeds of at least 200 kbps in one direction. About 2 million of those lines were serving residential subscribers.

The DSL business is growing so fast that the BOCs are struggling to keep up with demand. The Wall Street Journal reported that SBC is installing about 3,500 DSL lines each day. At the end of the first quarter of 2000 there were approximately 800,000 DSL lines in service in the United States. About 75 percent of those lines are provided by incumbent LECs and 25 percent by competitive carriers.

These trends show no sign of slowing down. Analysts project that deployment of DSL will increase by 300 to 500 percent over the next year. Analysts also estimate that subscribership to cable broadband services will at least double by the end of this year,

and by the end of 2005 could reach as many as 20 million subscribers. LECs and cable operators are predicted to invest over 25 billion dollars in infrastructure improvements over the next four years to bring broadband services to their customers.

The market-opening 1996 Act sparked infrastructure investment in telecommunications facilities by incumbent LECs as well as competing carriers. For example:

- Incumbent LEC investment in infrastructure was flat or declining until the passage of the 1996 Act;
- After the 1996 Act, incumbent LEC investment jumped approximately 20 percent;
- Aggregate industry investment subsequent to passage of the Act, including both incumbent LECs and competing carriers, nearly doubled, increasing from 30 billion dollars to 60 billion dollars.

These statistics do not paint a picture of incumbent companies deterred by legal requirements from deploying new services to consumers.

The vision of the Act and the vision shared by the FCC -- that consumers will have a choice of providers offering a choice of pipes into the home or workplace -- is being realized. It is being realized through the opening of markets required by Congress in the 1996 Act. The rapid growth of broadband services is tangible proof that the market-opening requirements of the Act are working.

Competition Drives Broadband Delivery to All Areas

The opening of local markets drives competition, innovation, and produces a breadth of offerings. Although DSL technology has been available for years, it was not until the passage of the Act that competitive providers -- called data LECs or DLECs -- specializing in DSL deployment were born and began offering DSL service to consumers. Competitors need to collocate their equipment in BOC central offices and require conditioned local loops before they can even offer facilities-based DSL services. Then, to be competitive, DLECs require timely and cost-based loops and collocation. Once the DLECs had access to the inputs necessary to offer their DSL products to consumers, the threat of such competition spurred the BOCs to develop their own DSL products. Competition from the incumbent monopolies, in turn, is spurring the DLECs to develop even more new and innovative broadband products, services, packages, and prices. It is precisely this sort of competitive cycle that will accelerate the availability of broadband technology for all Americans.

Of course, competition among technologies as well as providers is also driving this investment. Wireless technologies -- both terrestrial and satellite -- are also on the scene. High-speed Internet service via satellite is available today virtually everywhere in the United States, including rural areas. Analysts project that wireless technologies will have 6 to 12 percent of the broadband market by 2004. Analysts also project that DSL will overtake cable as the overall leading technology for delivery of broadband services as early as 2002, with cable retaining its dominance amongst residential and small business customers until 2004, when cable and DSL will have equal market shares.

For the first time in history consumers are able to choose their local service provider and take advantage of increased competition for their long distance calls as a strong new competitor enters the market. The rewards do not end there. Competitive markets are also bringing consumers new choices in technology for the 21st Century.

Changing the rules of the game at this juncture would also undercut the substantial infrastructure investment being made by competitive telecommunications providers. For example, competing carriers have invested 30 billion dollars in new networks since the passage of the Act and are now investing over 1 billion dollars every month in their networks. In 1999, competing carriers are estimated to have spent over 15 billion dollars on overall capital expenditures, up from about 9 billion the year before. Investors will cut off the spigot when competitors are forced to try to compete with monopoly incumbent providers without full and fair access to the BOC's bottleneck facilities.

The simple reason why rural customers, and other customers in un-served and under-served areas, are not yet being served as robustly as we would like is not caused by legal impediments. Rather it is largely about simple economics. Providing customers with sophisticated services in areas of low density is an expensive undertaking. As such, the Commission has consistently acted to remove barriers to infrastructure investment and promote competition in broadband. For example, the Commission has:

· Convened a Federal-State Joint Conference to provide a forum for dialogue between the Commission, the states, and local and regional entities regarding the deployment of advanced telecommunications capability;

· Strengthened our collocation rules to encourage facilities-based advanced services by competitors;

· Encouraged the resale and unbundling of advanced services, but clarified that xDSL services are not subject to the resale discount when sold in bulk to ISPs;

· Encouraged the competitive delivery of xDSL services through line sharing;

· Ensured non-discriminatory access to facilities through separate affiliate conditions in the SBC/Ameritech and Bell Atlantic/GTE mergers;

· Established a comprehensive reporting requirement for providers of broadband services in order to seek greater insight into the development of broadband markets within particular geographic areas;

· Completed a successful auction of LMDS licenses that can be used for the provision of advanced services, and established a filing window for applicants to apply for authority to provide two-way MDS services.

In addition, to the extent that there may be instances where a LATA boundary is standing in the way of consumers getting broadband services from BOCs, the Commission has set up a LATA boundary modification process. For example:

- A BOC that provides advanced services to customers within a state may demonstrate that it cannot obtain an interLATA provider to connect its in-state network to the Internet and request a LATA modification to allow it to connect its network to the nearest out-of-state Network Access Point;

- A BOC could also request a LATA boundary modification to allow it to serve a particular customer, such as a hospital or university, where the customer cannot obtain an interLATA connection for its network; or

- A BOC may also demonstrate that it would not be able to deploy xDSL service to a LATA within a multi-LATA state unless the BOC is allowed to aggregate traffic from one LATA to another, or may be the advanced services provider of last resort for residential customers within a particular state. The BOC may then argue that it is uneconomical to deploy advanced services to such customers without a LATA boundary modification.

Notably, we have not received any requests for LATA modification since adopting this procedure in February 2000, and have received no requests to refile prior petitions. The Commission has stated its commitment to reviewing, in an expeditious manner, all LATA boundary modification requests that would provide consumers with advanced services.

Conclusion

In conclusion, the 1996 Act is working. Passage of the proposed legislation at this critical juncture would disrupt the Act's delicate balance between regulation and deregulation, postpone the benefits of competition to consumers by creating uncertainty and litigation, curtail the flow of investment into new markets, and inhibit the Act's goal of fostering broadband deployment. For all of these reasons, I urge you let the Act continue to work.